IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4818 OF 2004

Shubhkaran Jain .. Petitioner

Versus

Ms.Leena Govind Bhatia & Anr. .. Respondents

Mr.S.P.Kadam for petitioner

Mr.Mahesh Londhe i/b. Sanjay Udeshi for respondent No.1

Mr.P.S.Hingorani, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 26th September 2006.

P.C.

. Heard Mr.Kadam, learned Advocate for petitioner and learned Advocate for respondent

No.1 - original complainant.

2. Two submissions are canvassed by Mr.Kadam in support of the challenge to the order issuing process in a complaint instituted by first respondent against the petitioner and other accused alleging offence punishable under section 138 and 141 of the Negotiable Instruments Act.

3. The first submission is that the complaint, a copy of which is annexed at Annexure D page 25 to the petition, categorically contains the averments in para 2 where the complainant has alleged that the petitioner before me who is original accused No.3 was in charge and was responsible for conduct of day to day affairs of the accused No.1 company and the offence was committed with their knowledge, consent or their connivance. However, in this case, the cheque which was dishonoured came to be issued on 17th March 1997. Dishonour of cheque is on 15th May

1997. Prior to the issuance of the cheque as also dishonour on 1st March 1997, the petitioner had tendered his resignation which was accepted by the board and forwarded for information and necessary action to the Registrar of Companies by filling up form No.32. In such circumstances, atleast, insofar as petitioner is concerned, no offence is disclosed, even if the complaint is read as a whole and taken at its face value.

4. His second submission is that there is an averment in the complaint that a notice was sent by R.P.A.D. calling upon the accused to pay sums under the dishonoured cheque. However, notice was returned with postal remark "Company closed. Court seal". In such circumstances, there cannot be any offence when the receipt of the notice is in dispute.

5. Learned Counsel appearing for first respondent countered these submissions by

inviting my attention to the complaint and more particularly the averments in para 3. In his submission, the complaint would have to be read as a whole and at this stage, it cannot be said that there is no offence committed by the petitioner. This is not a case where the complaint is lacking in the basic averments. On the other hand, the dispute is with regard to the liabilities and that the offence is not committed because of resignation. These are pleas essentially to support the case of exoneration and acquittal and do not in any manner make the complaint vulnerable or non-maintainable. Further, there is a specific averment that the notice was served and in para 8 when the complainant avers that there is deemed service as far as the first respondent is concerned, then in such circumstances, no interference is necessary.

6. I have perused the complaint, with the assistance of learned Counsel appearing for both

sides. In my view, once, the averments in para 2 of the complaint are taken into consideration, then, insofar as, liabilities or responsibilities to honour the cheque are concerned, it is something which is based upon a resignation tendered and its acceptance and entry in the necessary registers and records. These aspects have to be gone into at the stage of trial when all materials are produced including the contents of these documents proved in accordance with law. It would be always open for the petitioner to place such materials on record, as are permissible in law, in support of his plea that once resignation having been tendered prior to issuance of cheque as also its dishonour, as far as he is concerned, there is no liability to honour the same and he may be acquitted. These pleas are based upon documents and the contents of which are yet to be proved. Similarly, whether any notice was issued or if issued, received and the postal remark could be construed

as deemed receipt, is again something which the trial court will have to consider after taking into consideration all such materials as are placed before it. All pleas based upon these materials are always open. By mere issuance of process neither the court below nor this Court has, in any way, pronounced finally on the guilt or otherwise of the accused.

7. Once, the complaint is not found to be lacking in necessary averments and prima facie, disclosing commission of offence, then, no case is made out for interference in my writ or inherent jurisdiction. Petition dismissed.

(S.C.Dharmadhikari, J)